

# Delegated decision report

## DECISION UNDER DELEGATED POWERS

**DECISION CANNOT BE TAKEN BEFORE MONDAY, 3  
OCTOBER 2011**

Title	<b>THE DISPOSAL OF VENTNOR BOTANIC GARDEN</b>
Report Author	<b>REPORT TO THE CABINET MEMBER FOR FIRE, CULTURE AND RESIDENTS' SERVICES</b>

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### PURPOSE

1. The report sets out the proposals regarding the future of Ventnor Botanic Garden (the "Garden") and recommends a way forward.

### OUTCOMES

2. The decision to be taken will achieve the following outcomes:
  - (a) The Isle of Wight Council (the "council") will safeguard the future of a significant public asset by transferring it to a suitably qualified organisation;
  - (b) An important scientific collection and research site will have the potential of being developed further;
  - (c) The council will have a clear timeframe for the transfer of the Garden and a funding deadline by which it will achieve a nil subsidy;
  - (d) A wide range of organisations including community groups will have the opportunity to express interest in taking on the Garden.

### BACKGROUND

3. The Garden, built on the site of the former Royal National Hospital for Consumption and Diseases of the Chest, has been in existence as a pleasure-ground since Victorian times. The Garden was formally named a botanic garden by HM the late Queen Mother in 1975. Its collection of largely southern hemisphere and Mediterranean plants reflects its almost unique microclimate, which enables it to grow a wide range of species which are not normally grown out of doors in the UK. This makes its collection of international scientific significance (for the taxa themselves and also for issues relating to the impact of climate change). The site's renowned beauty, teamed with its importance, makes the Garden one of the Island's premier visitor destinations.
4. On 7 December 2010, the Cabinet decided to explore ways in which the Garden could be managed differently, to realise a total saving to the council of over £300,000 each year from April 2012. This was in the context of having to find a total of £33million savings by 2014.

5. The Garden has benefited from a grant from the Millennium Commission (now the Big Lottery Fund “BIG”) (the “Grant”). The Grant was provided to assist in the construction of the visitor centre at the Garden, which was opened in May 2000. This grant was for a project to mark the Millennium and created a statement building to house the Garden’s management function, education and events rooms, and café. The Grant was match funded by the council, but the grant conditions attach to the entire 29 acres of the Garden (both sides of the Undercliff Road) and remain in place until 2077.
6. There are a number of conditions relating to the Garden’s future which cannot be altered without the consent of BIG:-
  - (a) The Garden must maintain reasonable levels of access to the public;
  - (b) BIG’s consent to any disposal is required. Securing BIG consent could prevent the potential claw back, if BIG is satisfied about the suitability of the successor body;
  - (c) There are a number of circumstances in which a disposal of the site would trigger claw back of a proportion of the Grant. The likely scale of such claw back could total almost £1million.
7. The Cabinet Member at the time of the 7 December 2010 decision invited a group of Island-based experts in business, tourism and horticulture, to come together as an Advisory Board, chaired by the Cabinet Member. The purpose was to advise the Cabinet Member on the various ways in which the council could approach the issue of transferring responsibility for the Garden, so that the Garden eventually operates at nil cost to the council.
8. The Advisory Board has met formally three times, and has also met informally without council members or officers, to consider the wider issue of community engagement with the Garden and the site’s long-term viability without council funding. The Advisory Board was invited to make recommendations about how the council might approach building a sustainable future for the Garden.
9. The Advisory Board has provided advice about how the Garden could be run more commercially and sustainably, based on their collective expertise. The key elements of their advice are summarised below:-
  - (a) If the council wishes to cease funding the Garden, this should not be undertaken suddenly and certainly not within financial year 2011/12. The Advisory Board recommended a period of tapered funding withdrawal, to permit the Garden’s successful transfer to a successor body;
  - (b) If the council wishes to enable the Garden’s future success as a viable community-run venture, it should transfer all appropriate assets and income streams as part of the council’s “offer”.
10. As part of its ongoing need to secure immediate savings from the Garden’s budget, the council has undertaken a full review of the staffing on the site. Following a restructure which focused firmly on the future viability of the Garden, the ongoing subsidy for the Garden has already been significantly reduced to £220,000 for the financial year 2011/12 compared to £301,000 for the previous year. However, in the current economic climate, with retail expenditure falling, it is not possible to guarantee that the Garden will be able to operate at nil cost to the council in the immediate future, as was set out in the 7

December 2010 decision. This is because the national trend in retail expenditure and retail plants expenditure in particular, does not reflect a buoyant market. The invitation to express interest makes clear that the bidders will need to put together a business plan for the Garden which addresses how the need for any subsidy could be removed, and the most deliverable timescale in which this would happen. This business plan will form part of the evaluation of bids.

11. The council aims to encourage increased economic activity on the Island, through the disposal. The Garden offers the successor body the opportunity to operate a horticultural training facility on the site, serving the profession (such training opportunities in gardens of importance are reducing across the UK) and amateur gardeners. Volunteering in the Garden will also be something which is available to the successor body as a way of building the site's reputation whilst offering local people the opportunity to develop new life skills.
12. The Garden has long benefited from the active support of its highly-effective Friends Society. The Friends do not manage the Garden but aim to support the Garden and its collection through significant levels of fundraising. The Friends' current constitution would not permit them to take a transfer of the Garden.
13. The council has a range of options available to it, to bring the Garden to the market and invite expressions of interest in its transfer. These are explored in "Options" below.
14. The option of transferring the Garden to another botanic garden or horticultural organisation has been considered. During previous rounds of public consultation, the Royal Botanic Gardens at Kew, the National Trust and the Royal Horticultural Society were all named as indicative of the kind of organisation that might take on the future management of the Garden. Although in principle, it would be highly desirable for such prestigious institutions to operate the Garden, in practice, this is not seen as a viable option. All the institutions named are facing efficiency drives of their own, and exploratory discussions with the National Trust have confirmed that it would not take on the Garden without a significant "dowry" to enable the Trust to maintain the site. None of the key horticultural centres in the UK would be in a financially secure position to take on the Garden without a similar dowry. A dowry is not possible in the current financial climate and therefore this option has not been considered further.

## STRATEGIC CONTEXT

15. The recommendation underpins the Eco Island themes of Thriving Island, and Safe and Well-kept Island, because it has the potential to support the development of a new direction for the Garden, which will prioritise sustainability in terms of economy and environment. The recommendation also supports the potential development of a social enterprise or similar community venture, which could include members of the community in the operation of the Garden. It is considered that this outcome, coupled with a disposal on a long term lease offers the best prospect of ensuring that BIG does not instigate claw back.
16. The recommendation also underpins the council's corporate priority of delivering savings, through changed service provision, because it will result in the council managing its resources more effectively and minimising its financial risks.

## CONSULTATION

17. The consultee's for this decision have been: BIG; the Ventnor Botanic Garden Advisory Board; the Ventnor Botanic Garden Friends' Society; the current Cabinet Member; Director of Community Wellbeing and Social Care; Ventnor Botanic Garden management.
18. In addition, there was a review of the Garden's viability in 2010 which resulted in two public meetings, attended by over 250 local residents. At these meetings, a number of approaches for increasing income at the Garden were suggested by members of the audience, including recommendations that the council consider charging for entry. There was also an online campaign on the Facebook social networking site. This attracted comment from an international audience.

## FINANCIAL / BUDGET IMPLICATIONS

19. The table below shows how much it has cost to run the Garden over the last two years, and the projected costs for 2011/12 and 2012/13 (excluding non controllable costs such as depreciation, corporate recharges etc).

<b>Year</b>	<b>2009-10</b>	<b>2010-11</b>	<b>2011-12</b>	<b>2012-13</b>
	<b>Actual</b>	<b>Actual</b>	<b>Budget</b>	<b>Budget</b>
	<b>£'000</b>	<b>£'000</b>	<b>£'000</b>	<b>£'000</b>
Gross Expenditure	495	488	522	512
Less: Income	(208)	(187)	(220)	(220)
Less: savings target	0	0	(82)	(300)
Net Cost	287	301	220	(8)

For the purposes of comparison, the above costs exclude redundancy costs of £95,000 which were incurred during 2010/11 and funded centrally as part of the council's closedown process for the annual accounts.

20. The recommendation would result in a transfer of the Garden in April 2012, with the council ceasing to fund the Garden by April 2013, at the latest. The council is committed to securing a successful transfer of the Garden to an appropriately qualified organisation, which would ensure a sustainable future for the site.
21. The recommendation involves the transfer of a number of valuable assets, particularly the Visitor Centre, built at a cost of £2.6 million, and "Signal Point", recently the subject of market bids at a value of £295,000. The recommendation also requires the transfer of the library, valued according to the "average book price" on 1 July 2011 for replacement of non-fiction books in public libraries, at over £20,000. There will also be the transfer of valuable intellectual property rights, particularly the Ventnor Botanic Garden brand and its website domain name, [www.botanic.co.uk](http://www.botanic.co.uk), which would be highly prized by other botanic enterprises across the world.
22. The council's capital resources are limited and, for its main capital commitments outside of schools and transport, have to fund these from capital receipts from disposal of assets or from prudential borrowing. In considering this proposal, any benefits to the community need to be measured against the capital receipt that would otherwise be obtained. If "Signal Point" is included in the transfer of the Garden, the council will forego a capital receipt of approximately £275,000 based on the recent sale offer

adjusted for current economic market conditions. The cost to the council is effectively the additional prudential borrowing costs to be incurred on £275,000 that would otherwise have been met from a capital receipt. Over a 20 year period this would amount to a revenue cost of some £28,000 per annum.

## LEGAL IMPLICATIONS

23. There is no statutory requirement for the council to operate a botanic garden but it may do so in accordance with general powers under the Local Government Act 1972 (the 1972 Act). Title to the Gardens is registered to the council and there are no covenants preventing its disposal. The council must, however, have regard to the conditions of the Grant. The council has the power to dispose of its property under s.123 of the 1972 Act in any manner it wishes for the best consideration that can reasonably be obtained. This does not necessarily mean the highest price achievable, as it can be obtained by means other than purely monetary consideration, such as the additional community benefits that the transaction may generate, whilst observing the council's fiduciary duties to the public generally, and protecting council interests and service delivery.
24. The council received funding from the Millennium Commission (now BIG) to assist in building a visitor centre at the Garden. The Grant is repayable if the Garden is not used in accordance with the terms of the Grant. Any disposal of the Garden will require the prior approval of BIG.
25. Options A and B are likely to give rise to a transfer of council employees in accordance with The Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE"). Any TUPE implications must be carefully considered and TUPE must be complied with in order to avoid unfair dismissal claims. Option C would have no impact on the staff employed at the Garden in the short term, but a redundancy situation may arise in relation to some of those staff in the longer term.
26. Should the council proceed with either Option A or Option B, it is important to note that in order to offer the greatest protection to staff who will be eligible to transfer under TUPE any evaluation of expressions of interest should ensure that the successor body has the financial ability to take over the payroll and pension obligations and also meet relevant equality and diversity obligations.

## PROPERTY IMPLICATIONS

27. There are a number of restrictions that have an impact on the potential market value of the property. These include the legal requirement that the Garden must offer reasonable public access for the public to the botanic collection and the possibility of clawback of the Grant by BIG if the site is disposed of without BIG consent. The absence of these restrictions may permit an alternative use of the site (subject to planning) which would be likely to generate more interest in the site and a higher capital receipt.
28. Within the site is a residential property known as Signal Point. Signal Point has in the past been occupied by tenants but has now been vacant for approximately five years. Signal Point was recently offered for sale, resulting in an offer of £295,000. The transaction did not proceed because the purchaser withdrew their offer. If Signal Point is included as part of this disposal (rather than it being sold separately), the council would

forego a capital receipt of around £275,000. An offer at a level equivalent to the previous offer is unlikely to be achieved in the current market.

29. In 2004, a small biological sewage treatment plant was installed to ensure that discharged foul water complied with a national directive to improve the quality of marine and bathing water. Recent Environment Agency (EA) inspections have identified inadequacies in the system and the council is currently working with the EA and other organisations, to agree a permanent solution. It is recommended that the management of this treatment system is excluded from the transfer to the successor body until the issues have been addressed successfully. Subsequently, the responsibility for the treatment plant should then be transferred to the successor body.
30. The restrictions set out above may have an impact on the freehold disposal of the site, and it is recommended that any transfer should be on the basis of a 125 year ground lease. This will enable a transfer of a sufficient interest in the property to make it potentially viable to interested parties.
31. It is important that the availability of this opportunity is marketed sufficiently widely, using the council's internet site and the leading trade journals, to attract as much interest as possible.

## EQUALITY AND DIVERSITY

32. An Equality Impact Assessment ("EIA") has been undertaken taking into consideration all the Options. This is informed by Joint Strategic Needs Assessment data (looking at levels of affluence in the area, access to public transport etc, visitor attraction trends, and visitor feedback on the site). The EIA indicates that there would be a neutral impact on the "protected characteristics" (such as race, sex, age and disability etc).
33. The draft EIA is attached at Appendix B.

## OPTIONS

### **Option A**

34. To transfer Ventnor Botanic Garden by inviting expressions of interest in a property disposal (subject to Grant conditions being met and BIG consent);

### **Option B**

35. To transfer Ventnor Botanic Garden through the use of a tendering process (subject to Grant conditions being met and BIG consent) ;

### **Option C**

36. To retain Ventnor Botanic Garden within council management.

## EVALUATION

### **Option A**

37. This option represents a way in which the council can transfer the site to a successor body through a property disposal.
38. A disposal of the freehold would require BIG's consent and the successor body's objectives accorded with the Grant.

39. A disposal by way of a lease would require BIG's consent and the successor body would be required to deliver the outcomes set out in Appendix A to satisfy the terms of the Grant. This approach consequently offers the council the greatest protection against BIG exercising claw back.
40. The process for implementing Option A would require the council to advertise the opportunity in local media, the council website and leading trade journals for horticulture and estate management.
41. Interested parties will be sent the Invitation to Express Interest (the Invitation – see Appendix A for a draft) together with an information pack containing further information about the Garden, an application form and details of the process to be followed to determine the successor body.
42. The Invitation sets out what is available to the successor body. This includes the benefit of a lease with The Royal Hotel Limited for the operation of on-site catering facilities. This lease, which has the approval of BIG, runs until 2019.
43. The Invitation sets out also the outcomes which the successor body will be required to deliver.
44. It is anticipated that the Invitation will generate innovative and collaborative bids as well as providing all the information that is required to demonstrate to both the council and BIG that the successor body is suitably qualified to take on the Garden.
45. Option A is recommended because it represents the most inclusive way for the council to enter into an arrangement to safeguard the future of the Garden.

### **Option B**

46. This option would put in place an agreement for the management of the Garden which would be let following an outcome based tendering process undertaken in accordance with the council's contract standing orders and procurement code. Any organisation, whether a commercial body or a community or social enterprise could bid to manage the Garden.
47. This option would retain the council's freehold of the Garden and maintain its position as key agency responsible for the fact that the Grant terms are met.
48. This option would put in place a management agreement for the operation of the site. However, the future of the Garden would be better served by a disposal, so that a successor body could develop the site in accordance with the Outcomes set out in Appendix A. This would be more difficult to do, through a management agreement. The council seeks to free the Garden from restrictions resulting from the site's current operation within a local authority (such as eligibility for external funding bids) and a management agreement would not guarantee this was possible.
49. Option B is not recommended, because the council seeks to dispose of a series of assets, which would be most appropriately handled through a property transaction.

### **Option C**

50. This option would retain the status quo, with the council continuing to subsidise the running of the Garden for the foreseeable future. However, the Garden has been identified as a savings target, because the council's financial situation has forced it to concentrate on its statutory functions and duties and to reduce discretionary expenditure to the absolute minimum. The provision of a botanic garden is a discretionary service; the council does not have to operate it by law. Therefore, it does not represent a funding priority, and could be the focus for ongoing savings. The council does not see retention and operation of the Garden as a strategic funding priority. If the council were to continue its funding, it would be at a decreasing level. Eventually, the Garden would reach a level of non-viability which would mean its collection was not maintained and it would lose its botanic garden status. There would be a related loss of tourism interest in the site, and the scientific importance of the collection would be difficult to maintain if the collection itself was in decline. The council could explore actions to increase income levels, to try to offset the need to reduce expenditure. Charging for entry onto the site, or to discreet elements of the site, would have to be considered.
51. This option is not recommended, because the council is not in a position to guarantee to continue to fund the Garden at current levels and the Garden would therefore not be safeguarded from continued savings and related reduction in status, importance and popularity.

## **RISK MANAGEMENT**

### **Option A**

52. This poses medium levels of risk option overall, for the council. This involves a balance between the comparatively-low levels of potential financial risk associated with a freehold disposal, but the higher levels of financial risk associated with a leasehold. Although it has the potential to reduce the council's financial risks through a freehold disposal or grant of a long lease, BIG would have to approve the choice of successor body. BIG has indicated that it would only consider disposal of the freehold to an established commercial organisation if that organisation is completely "compatible with the project purpose" (ie with the aims of the original grant to the site). In addition, any freehold disposal at a market value would result in BIG requiring a payment of an "appropriate percentage of the sale proceeds". Based on BIG's formula, the amount to be paid to BIG would be in the region of £1million. This payment effectively prevents the council from selling the Garden at its market value and supports the council's contention that such a disposal is not an option the council can consider.
53. A freehold disposal for a nominal consideration or the grant of a lease at a peppercorn rent would not trigger a claw back by BIG and would pose a lesser financial risk. A freehold transfer of the Garden may result also, with BIG consent, in the conditions of the Grant being transferred to the successor body. The low financial risks are countered by high reputational risks. The council has made it clear that it would not seek to sell the Garden for a profit and to sell the Garden at all is very unpopular with the public. Much of the Facebook campaign (see Consultation section above) opposed the sale of the Garden. A freehold disposal to a successor body, other than one which was clearly focused on horticultural excellence and public access, would be very unpopular with residents and visitors.
54. A disposal by way of a long lease poses higher levels of financial risks to the council as the council remains liable for ensuring compliance with the Grant conditions. If the

successor body fails to deliver the required outcomes (which, if delivered in full, maintain compliance with the Grant conditions), the council would be required to remedy the situation which may result in additional and unforeseen costs. This risk would be mitigated by careful management of the lease, to ensure the delivery of the outcomes and the success of the successor body in driving the Garden forward. A disposal enables the council to manage its financial risks, reducing the levels of subsidy which have been required to date, in line with corporate budget policy, and safeguarding the public assets through a clear transfer arrangement. The transparency of the process could also mitigate reputational risks, because it would have a clear set of outcomes that any successor body must deliver. Through delivery of these outcomes by its tenant, the council is complying with its obligations to BIG and meeting the terms of its grant.

### **Option B**

55. This would be a medium risk option for the council. It poses low financial risks to the council, because it would be letting a management agreement or a service concession. This option poses medium levels of operational risk. A tendering process would be straightforward for council officers to put in place. However, this approach has the potential for high levels of reputational risk. The published aim of the council has been to engage community groups in the Garden and although the tendering process can be tailored to small and medium sized enterprises, it can be perceived as being too onerous for community-based ventures to engage in.

### **Option C**

56. This option is a high risk option. It would involve high levels of reputational risk, because the council has been very public about its desire to engage with a successor body to permit devolved operation of the Garden. To reverse this decision could attract resident dissatisfaction, with the council being seen as indecisive and unable to deliver against its ambitions. This dissatisfaction would only deepen, with further funding reductions in the Garden's budget leading to an ongoing inability to maintain the Garden's collection, botanic status and tourist reputation. The likelihood of increased charging, particularly charging for entry, would also pose high levels of reputational risk. This option also involves high levels of financial risk. The council is not able to prioritise funding the Garden to the current levels, and lower levels of funding will result a poorer offer on the site for visitors, which will in turn result in lower levels of income. This option would therefore fail to minimise the council's financial risks. This option would also pose operational risks, because an ongoing reduction in funding would have to affect staffing levels, which would have a negative impact on the remaining employees' ability to maintain standards and the botanic reputation of the Garden.

## **RECOMMENDATION**

### **Option A**

To transfer Ventnor Botanic Garden by inviting expressions of interest in a property disposal (subject to Grant conditions being met and BIG consent)

## **APPENDICES ATTACHED**

57. [Appendix A](#) – Invitation for expressions of interest in the transfer of Ventnor Botanic Garden (draft)
58. [Appendix B](#) – Equality Impact Assessment (draft)

## BACKGROUND PAPERS

### 59. Millennium Commission Grant documentation

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*Cabinet Member*  
*Fire, Culture and Residents' Services*

Decision

Signed

Date

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